

Department of Energy

§ 780.50

of special nuclear material or atomic energy;

(b) The licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(c) The activities to which the patent license is proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of the Act; and

(d) The applicant has made efforts to obtain reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by the Board in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. Where this requirement is waived due to national emergency or other circumstances of extreme urgency, the owner of the patent shall be notified as soon as reasonably practicable. Where this requirement is waived for a public non-commercial use, the owner of the patent shall be notified promptly.

[46 FR 39581, Aug. 4, 1981, as amended at 58 FR 68734, Dec. 29, 1993]

§ 780.46 Communication of decision to General Counsel.

When the Board decides to issue a patent license under section 153c of the Act, the Board shall send the decision to the General Counsel and instruct the General Counsel to issue the license on terms deemed equitable by the Department and generally not less fair than those granted by the patentee or by the Department to similar licensees for comparable use.

§ 780.47 Conditions and issuance of license.

(a) Upon receipt of the Board's decision and instruction to issue a patent license, the General Counsel shall issue a license which complies with the following:

(1) The scope and durations of such use shall be limited to the purpose for which it was authorized;

(2) Such use shall be non-exclusive;

(3) Such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(4) Any such use shall be authorized predominantly for the supply of the U.S. market; and,

(5) Authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur.

(b) The Board shall have the authority to review, on motivated request, the continued existence of these circumstances. The parties will propose and agree on a reasonable royalty fee within a reasonable time as determined by the General Counsel. A reasonable royalty shall provide adequate remuneration for the circumstances of each case, taking into account the economic value of the authorization. If a party does not agree with the terms and conditions of the license as determined by the General Counsel or if a royalty fee cannot be agreed upon within the reasonable time period established by the General Counsel, any party may, within 30 days after the expiration of such time period, initiate a proceeding before the Board, in accordance with subpart E of this part, for a reconsideration of the General Counsel's determination. After the proceeding under subpart E of this part is completed, the General Counsel shall modify the patent license in accordance with the Board's determination.

[46 FR 39581, Aug. 4, 1981, as amended at 58 FR 68734, Dec. 29, 1993]

Subpart E—Application for Royalties and Awards Under Section 157 of the Atomic Energy Act of 1954 and Compensation Under Section 173 of the Atomic Energy Act of 1954 and the Invention Secrecy Act (35 U.S.C. 183)

§ 780.50 Applicants.

(a) Any owner or licensee of a patent licensed under section 158 or subsections b or e of section 153 of the Act may file an application with the Board for the determination of a reasonable royalty fee.